IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMP No.1771 of 2006 in CWP No.391 of 2004.

Date of Decision: 7th May, 2008.

Nitish Chauhan .. Petitioner.

Versus

Sister Helem D Costa, daughter of Mr. Francis D Costa, Principal, St. Luke's Senior Secondary School, Solan. .. Respondent.

Coram

The Hon'ble Mr. Justice Jagdish Bhalla, Chief Justice.
The Hon'ble Mr. Justice R.B. Misra, Judge.

Whether approved for reporting?[1]

For the petitioner: Petitioner in person.

For the respondent: Mr. K.D. Sood and Mr. Sanjeev Sood, Advocates.

Jagdish Bhalla, C.J. (Oral)

The petitioner is a student and he has filed this application through his father wherein basically two prayers have been made (a) necessary directions be issued to the competent Court having jurisdiction to prosecute the respondent for the offence of perjury and fabricating false evidence, and (b) punish the respondent for contempt of Court for lowering the honour, prestige, esteem and dignity of this Court.

The petitioner has filed Writ Petition No. 391 of 2004 after being aggrieved for not getting admission in the non-medical stream (subjects-Physics, Chemistry, Mathematics). Before declaration of Class-10 result the petitioner was offered admission in Class-10+1 in a routine manner to the Commerce stream on the basis of his performance in Class-9 and Class-10. However, after the result was declared wherein the petitioner scored about 61% marks. However, in science subject, according to the father of the

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[1] Whether the reporters of Local Papers may be allowed to see the judgment?

petitioner, the petitioner has scored 64% marks and in Mathematics 75%, but he could not be admitted, therefore, he filed the aforesaid writ petition.

After hearing the parties the said petition was dismissed and the petitioner had no other alternative except to admit his son in some other school with Physics, Chemistry and Mathematics subjects. Now the petitioner is pursuing his Engineering Course in Australia.

The father of the petitioner one day while sitting on his internet found that one student, namely Rohit Upreti having scored less marks than his son had appeared in the Class-10+2 examination with Physics, Chemistry, Mathematics subjects from St. Luke Senior Secondary School, Solan. According to the petitioner, Rohit Upreti was initially offered non-medical group (subjects- Physics, Chemistry, Mathematics) on the basis of performance of Class-9 and Class-10. After the declaration of the result according to the respondent, Rohit Upreti was shifted to Commerce stream, but in the month of September after completing two semesters in Commerce Rohit Upreti was shifted to the non-medical stream (Physics, Chemistry, Mathematics). Petitioner's father came to know after the result of Class-10+2 was declared. Therefore, he felt aggrieved has approached this Court with this application calling upon this Court to issue necessary directions and punish the respondent as referred hereinabove.

The petitioner's father submits that an affidavit was filed in the year 2004 by the respondent whereby it was indicated that one student has left the Institution. However, in 2007 while filing the second affidavit the respondent has indicated that four students have left. Therefore, one of the affidavits is false in nature. Accordingly, the respondent be punished. It has been further indicated on behalf of the father of the petitioner that the father of the petitioner had to spend lot of money for sending his son to further studies to Australia and has suffered mental agony because the petitioner was not admitted in non-medical stream.

We can understand and appreciate the emotional trauma of the father of the child who could not get admission in his favourite subjects in particular good College of his choice. However, the Court has to take decision according to law and the case is to be decided on its merits in accordance with law. While petitioner's admission was being considered, he could not be admitted in the desired stream referred hereinabove because of less number of marks. However, after two semesters one Rohit Upreti having less number of marks was admitted in the same stream which was prayed by the petitioner. The admission of Rohit Upreti has not been questioned in this petition. The same could have been challenged by the petitioner. On the other hand, the respondent's case is that Rohit Upreti was admitted in the non-medical after consultation of Central Board of School Education. This is not the question before us. The only question before us is whether some wrong affidavit was filed which resulted into dismissal of the writ petition of the petitioner.

From the arguments of petitioner's father and from the affidavit we do not find that any wrong affidavit or fabricated false evidence was the ground for dismissal of the Writ Petition No.391 of 2004. We further find that the admission of Rohit Upreti was neither challenged nor any review petition was filed.

In the light of the above, no interference is warranted in this application. Accordingly, the application is rejected, so also all other applications.

(Jagdish Bhalla), C.J.

May 07, 2008. **(R.B. Misra), J.**
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